

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4684 OF 2024

Sarafuddin Ayub Shaikh

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Ms. Priyanka H. Chavan a/w. Ms. Ilsa Shaikh i./by Mr. Nikhil Gole, Advocates for Applicant.
 - Ms. Rajeshree V. Newton, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025.

P.C.:

1. Heard Ms. Chavan, learned Advocate for Applicant and Ms. Newton, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.164 of 2024 registered with Oshiwara Police Station for offences under Sections 419 and 420 of the Indian Penal Code, 1860 readwith Sections 66(c) and 66(d) of the Information and Technology Act, 2000. There are total 9 Accused in the crime, out of which 2 have been arrested and 7 are absconding. Applicant is indicted as Accused No.2 and is incarcerated since 29.02.2024 i.e for 1 year and 12 days.

3. Role attributed to the present Applicant is that he alongwith Accused No.1 obtained Gumastha licence in the name of one Belpada Chicken shop showing himself as the proprietor and opened bank account of the said shop in Punjab National Bank and RBL Bank and that said accounts were operated by Applicant. Accused No.1 has disclosed that he was paid Rs.25,000/- by present Applicant. It is alleged that the amount received from First Informant was transferred to various Bank Accounts and an amount of Rs.1,50,000/- was transferred to the Account of Belpada Chicken Shop in Punjab National Bank.

4. Ms. Chavan, learned Advocate for Applicant has drawn my attention to the previous order dated 13.02.2025 wherein this Court has taken cognizance of order dated 05.04.2024 passed below Exhibit – 1 by the Trial Court that an amount little less than Rs.7,00,000/- has been reverted to the First Informant and would urge the Court to consider the said crucial fact for deciding the bail. That apart she would submit that Applicant has been falsely implicated in the present crime and there is no *prima facie* evidence in the entire charge-sheet against the Applicant and the Applicant's sole indictment is only on the basis of Accused No.2's statement. She would submit that nothing incriminating has been recovered from the Applicant and no amount has been credited to the personal bank account of the Applicant either. She would submit that even in the statements of independent

witnesses nothing incriminating against the Applicant has come on record. Hence she would submit that *prima facie* nothing incriminating has come on record to establish the role and complicity of Applicant in the crime. She would submit that there is no recovery or discovery pending at the instance of the Applicant and hence his further custody is unwarranted. She would submit that investigation of the matter is completed and charge-sheet has been filed and that trial would not be completed in the near foreseeable future. Hence she would pray for release of the Applicant on bail.

5. Ms. Newton, learned APP has vehemently opposed the Bail Application. She would submit that this Court may consider the fact that Applicant has 11 criminal antecedents to his discredit and hence would submit that Applicant being a habitual offender, this Court should be cautious while considering his Bail Application. She would submit that there is ample material on record to show the complicity of the Applicant in the present crime. She would submit that investigation has revealed that Applicant is the principal accused who with the aid of other wanted co-accused has committed online cyber fraud to the tune of crores of rupees and hence would urge the Court to reject the Bail Application. Though the last submission is *prima facie* serious, but there is nothing substantial or any material placed before me to consider it.

6. With the able assistance of the learned Advocates, I have perused the record of the case. In so far as Applicant's criminal antecedents are concerned, learned Advocate for Applicant has placed on record a chart from which it is seen that in most of the cases his custody was not sought by the prosecuting agency and in the rest he is enlarged on bail. Furthermore it is seen that indictment of the Applicant in the present case is only on the basis of statement of co-accused and no other evidence is placed on record. There is no recovery or discovery pending at instance of the Applicant. Investigation of the matter is completed and charge-sheet is filed before the Trial Court.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases. That apart indictment of Applicant is on the basis of co-accused's statement which is covered by the decisions of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹.

¹ (2021) 4 SCC 1

8. In the *prima facie* facts of the present case delineated herein above, in my opinion further custody of the accused is not therefore required. Attendance of the Accused for trial can be secured by imposing stringent conditions. Hence the following order:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary

adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application No.4684 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

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